

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 DANIEL HIRAM GIBSON,
6 Plaintiff,

2: 13-cv-01908-APG-VCF

7 vs.

ORDER

8 SOCIAL SECURITY ADMINISTRATION,
9 Defendant.
10

11 Before the court are Plaintiff Daniel Hiram Gibson's Motion/Application to Proceed *In Forma*
12 *Pauperis* (#1¹) and Complaint (#1-1).
13

14 ***IN FORMA PAUPERIS APPLICATION***

15 Plaintiff Daniel Hiram Gibson asserts in his application to proceed *in forma pauperis* that he is
16 currently unemployed, has no take home wages, and has \$18.65 in a checking account. (#1). Plaintiff
17 also asserts that he has pays \$22.00 a month in section 8 housing. (*Id.*) Accordingly, plaintiff's request
18 to proceed *in forma pauperis* is granted pursuant to § 1915(a).

19 **LEGAL STANDARD**

20 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
21 complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if
22 the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or
23 seeks monetary relief from a defendant who is immune from such relief. *See* § 1915(e)(2). "To survive a
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25 ¹ Parenthetical citations refer to the court's docket.

1 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to
 2 relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations and
 3 citation omitted).

4 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
 5 material allegations in the complaint are accepted as true and are to be construed in the light most
 6 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). When a court
 7 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with
 8 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the
 9 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.
 10 1995) (citation omitted).

11 DISCUSSION

12 Plaintiff’s complaint arises from an unfavorable decision by the Commissioner of Social Security
 13 Administration (hereinafter “Commissioner”). (*See* Compl. (#1-1) at 4) (appending the Commissioner’s
 14 notice of final decision). Plaintiff’s complaint indicates that he is disabled as that term is defined in the
 15 Social Security Act, and that he filed an application for disability insurance benefits. (*See id.* at 1)
 16 (stating that the Social Security Administration owes Plaintiff benefits). The Commissioner denied the
 17 application both upon initial review and reconsideration. (*Id.* at 4) Plaintiff participated in a hearing
 18 before the ALJ, and the ALJ issued a decision also denying plaintiff’s claim for benefits. (*Id.*) The
 19 Appeals Counsel denied plaintiff’s request for a review of the ALJ’s decision, making the
 20 Commissioner’s decision final. (*Id.*) Plaintiff has appealed the decision of the Commissioner to this
 21 court.

22 Plaintiff may appeal to this court the Commissioner’s denial of his application for Disability
 23 Insurance Benefits under Title II of the Social Security Act. *See* 42 U.S.C. §§ 401-433. This court has
 24 jurisdiction over the matter. *Id.* Construing plaintiff’s allegations in light most favorable to Plaintiff, the
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1 court finds that Plaintiff has asserted a claim upon which relief can be granted. *See Russell*, 621 F.2d at
2 1039.

3 Accordingly, and for good cause shown,

4 IT IS ORDERED that plaintiff's Application to Proceed *In Forma Pauperis* (#1) is GRANTED.

5 IT IS FURTHER ORDERED that Plaintiff is permitted to maintain the action to conclusion
6 without the necessity of prepayment of any additional fees, costs, or security. This order granting *in*
7 *forma pauperis* status does not extend to the issuance of subpoenas at government expense.

8 IT IS FURTHER ORDERED that the Clerk of the Court file the Complaint (#1-1) and serve the
9 Commissioner of the Social Security Administration by sending a copy of the summons and Complaint
10 (#1-1) by certified mail to: (1) General Counsel, Social Security Administration, Room 611, Altmeyer
11 Bldg., 6401 Security Blvd., Baltimore, Maryland 21235; (2) the Attorney General of the United States,
12 Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530; and
13 (3) Office of the Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St.,
14 Suite 899, San Francisco, CA 94105-1545.

15 IT IS FURTHER ORDERED that the Clerk of Court issue summons to the United States
16 Attorney for the District of Nevada and deliver the summons and Complaint (#1-1) to the U.S. Marshal
17 for service.

18 IT IS FURTHER ORDERED that from this point forward, plaintiff must serve upon Defendant,
19 or his attorney if he has retained one, a copy of every pleading, motion, or this document submitted for
20 consideration by the court. Plaintiff must include with the original paper submitted for filing a
21 certificate stating the date that a true and correct copy of the document was mailed to the defendants or
22 their counsel. The court may disregard any paper received by a district judge, magistrate judge, or the
23 Clerk which fails to include a certificate of service.

1 IT IS FURTHER ORDERED that the Clerk of Court will unseal Plaintiff's filings. Plaintiff is
2 directed to Local Rule 10-5 and *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172 (9th Cir.
3 2006), which discuss filing documents under seal.

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5 DATED this 29th day of October, 2013.

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9 CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE